

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
PUBLIC HEALTH SERVICE  
INDIAN HEALTH SERVICE  
ROCKVILLE, MARYLAND 20857

INDIAN HEALTH SERVICE CIRCULAR NO. 97-07 Refer to: OD/OTP

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**TRIBAL CONSULTATION AND PARTICIPATION POLICY**

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1. **PURPOSE.** The Indian Health Service (IHS), together with American Indian and Alaska Native (AI/AN) tribal governments and organizations, hereby establishes this policy requiring consultation and participation by and between these governments on IHS program policies and activities.
2. **BACKGROUND.** A unique government-to-government relationship exists between AI/AN tribes and the Federal government. Treaties and laws, together with court decisions, have defined a relationship between the AI/AN people and the Federal Government that is unlike that between the Federal Government and any other group of Americans. The implementation of this policy is in recognition of this special relationship. --
3. **PHILOSOPHY.** This policy is based on the following two foundations.
  - A. **Political/Legal Foundations.**
    - (1) The Indian Self-Determination and Education Assistance Act, Public Law (P.L.) 93-638, as amended, states:

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Section 3(a): Congress recognizes the obligation of the United States to respond to the strong expression Of the Indian people for self-determination by assuring maximum Indian participation in the direction of Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities."

Section 3(b): 'The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and Indian people through . effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs, and services."

- (2) The Indian Health Care Improvement Act, P.L. 94-437, as amended, states:

Section 2(b): "A major national goal of the United States is to provide the quantity and quality of health services which will permit the health status of Indians to be raised to the highest possible level and to encourage the maximum participation of Indians in the planning and management of those services."

- (3) Memorandum to the Heads of Executive Departments and Agencies from President William J. Clinton, April 29, 1994, states:

((b) 'Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals."

- B. Ethi Ethical Foundation The ethical foundation of this policy is the special relationship between sovereign governments; the United States and AI/AN tribal governments. This relationship is based on the cession

of lands by AI/AN tribes in return for the provision of services by the United States. The AI/AN people have an inalienable right to self government. self-government means, government in which decisions are made by the people who are most directly affected by the decisions. The United States has a moral obligation to promote consultation and participation with AI/AN tribal governments.

#### 4. DEFINITIONS.

- A. Consultation Consultation - Consultation is an enhanced form of communication that emphasizes trust and respect. It is a shared responsibility that allows an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension. Consultation is integral to a process of mutually satisfying deliberations to result in collaboration and joint decision-making.
- B. Participation . Participation is effective, mutually satisfactory, joint decision-making. In true participation, an individual is not required to endorse or accept unilateral decisions made by either party.

#### 5. OBJECTIVES.

- A. To formalize the requirement for consultation and participation by representatives of tribal governments in IHS policy development and program activities.
- 8. To establish a minimum set of requirements and expectations with respect to consultation and participation for the three levels of IHS management: Headquarters, Area Offices, and Service Units.
- c. To identify critical events at which tribal consultation and participation will be required for the three levels of IHS management: Headquarters, Area Offices, and Service Units.
- D. To promote the development of innovative methods of obtaining consultation on issues from tribal representatives and involving representatives in Agency decision making processes.
- E. To charge and hold responsible the principal managers within the IHS (the Director, Deputy Director, Chief Medical Officer, Director of Headquarters Operations, Director of Field Operations, Senior Advisor to the

Director, Area Directors, Headquarters Office Directors, and Service Unit Directors) for the implementation of this policy.

6. **ESTABLISHMENT OF TRIBAL ADVISORY ORGANIZATIONS/COMMITTEES.**

The principal focus for consultation and participation activities of the IHS is with individual tribal governments. However, it is frequently necessary that the IHS have organizations/committees in place from which to solicit consensual tribal advice and recommendations, and to involve tribes in decision-making and policy development.

In consultation with elected tribal governments, the IHS identifies and assists in the support of tribal health advisory organizations/committees.

- A. Headquarters. The National Indian Health Board (NIHB) serves as the advisory organization and a major source of consultation and advice **on** issues of national importance. Support for the NIHB is negotiated by the Director, IHS, and the Board of Directors of the NIHB. Meetings between IHS management and the Board of Directors of the NIHB are scheduled on a quarterly basis.
- B. Area Offices Each Area Director, in consultation with tribal governments, must designate an organization/committee representative of all tribal governments served by the Area Office. The designated organization shall provide advice and consultation to the Area Director and Area office staff. Meetings between the, designated tribal organization and Area Office management and staff shall occur at least four times each year. In lieu of establishing a formal organization/committee, Area Directors provide funding for travel and per diem to enable representatives of tribal governments to meet with the Area Director and the executive management staff in the Area on a regular basis (at least quarterly).
- C. Service Units The Health Advisory Board established at each IHS service unit is the organization utilized by the Service Unit Directors (SUD) and management/clinical staff for regular consultation and participation purposes. Each SUD and his/her staff meets with tribal government officials (e.g., chairperson, tribal council on a mutually agreed to schedule).

7. SCHEDULE FOR CONSULTATION Managers in the IHS must establish and adhere to a formal schedule of meetings to consulting with tribal governments and representatives concerning the planning, conduct, and administration of IHS activities. Trust between the IHS and tribal governments and organizations is an indispensable element in establishing a good consultative relationship. Managers in the IHS must involve tribal representatives in meetings at every practicable opportunity.

The IHS managers are encouraged to establish additional forums for tribal consultation and participation, and for information sharing with tribal leadership.

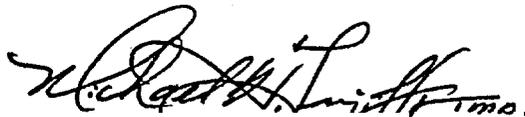
8. IHS BUDGET.

- A. Budget Formulation. The IHS managers are to solicit the active participation of tribes and tribal organizations in the formulation of the President's proposed budget for the IHS. The formulation of the President's budget involves the three levels of IHS management and requires tribal consultation and participation at each level.
- (1) Service Unit. Each SUD is responsible for meeting with tribes **on** an annual basis to ensure the tribes' participation in the budget formulation process and in identifying budget priorities.
  - (2) Area office An Area-wide budget formulation **team** shall be established and composed of tribal representatives and appropriate IHS staff. The **Area** team is responsible for identifying **Area-wide** health priorities and budget priorities, within the parameters and guidelines provided by the Office of Management and Budget. Each Area **team** provides input at every major stage of the budget formulation process, including briefing the Area Board Representatives to the NIHB.
  - (3) Headquarters- The Director, IHS, and a Headquarters budget formulation team composed of Senior staff, utilizes the recommendations of the **Area teams** to propose the annual **IHS** budget for submission to the Assistant Secretary for Management and Budget. Subsequent to the submission of the proposed IHS budget, the Director consults with tribal representatives to review health priorities and budget priorities **at** each stage of the budget formulation process.

- B. Budget Execution. It is IHS policy to involve tribal governments in decision-making concerning the allocation of new funding (i.e., funding that is not base funding to a tribe or congressionally earmarked for specific tribes), this is provided as a result of the appropriations process. This policy is described in IHS Circular No. 92-5, "Budget Execution Policy (Allocation of Resources)."

The appropriate consultative organizations for this purpose are described in Section D. of this Circular, or may be any other organizations or mechanisms as agreed to by the Area Director and tribal governments.

- c. Budget Information Disclosure The IHS managers must initiate a process whereby the tribes and tribal organizations are provided the following IHS budget related information on an annual basis: appropriations, allocation, expenditures, and funding levels for programs, functions, services, and activities.
9. CRITICAL PERFORMANCE ELEMENT A critical performance element requiring the implementation of this policy shall be made part of the annual performance standards of principal managers in the IHS.
10. TRIBAL RESOLUTIONS- Resolutions submitted by tribal governments to the IHS shall be referred to the appropriate IHS program office. The receipt of tribal resolutions shall be formally acknowledged by the IHS to the tribal government/organization. A substantive response, if required, must be forwarded to the tribal government within sixty days.
11. EFFECTIVE DATE This circular is effective on the date of signature by the Director, IHS.



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